IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1882 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAHLADBHAI S PATEL

Versus

MUNICIAPL CORP & ANR

Appearance:

1. Special Civil Application No. 1882 of 1982
NOTICE UNSERVED for Petitioner No. 1-12
MR MG NAGARKAR for Respondent No. 1-2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 01/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By filing instant petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash assessment in respect of the petitioners' shop and the bills for tax issued on the basis of the said assessment as shown in Annexure-A to the petition. The petitioners have further prayed to quash entries of Gross Rateable Value made by the respondents in their assessment book for the official year 1981-82 and the relevant orders in respect of the said premises.

2. The petition was placed for admission hearing before the Division Bench on May 6, 1982, and after hearing the learned counsel of the petitioners, the following order was passed:

"Notice pending admission to issue on fifty percent of the amount being deposited in the Court or paid to the Municipal Corporation by each of the petitioners towards the tax dues to the Municipal Corporation without prejudice to rights and contentions. The Municipal Corporation may also accept without prejudice to rights and contentions. If the amount is deposited in Court, the office may issue the notice after verifying that the amount is so deposited. If the amount is paid to the Corporation directly, upon learned Counsel for petitioners certifying under his signature that the amount has been paid, notice may issue.

Ad interim relief till further orders on condition that the remaining one-half of the amount is deposited or paid on or before June 18, 1982. Petitioners to place on record to pay the remaining amount by that date within ten days from today.

On aforesaid conditions notice to be made returnable on June 28, 1982."

Thereafter, on July 26, 1982, the Court had issued Rule and directed that instant petition be heard along with allied matters.

3. The petition was notified for final hearing before the Division Bench on September 12, 2001, and Division Bench had passed the following order:

"Where the Court has made an order that notice will be issued only on compliance of certain directions, it is the duty of the Registrar to make a note on the docket that as per the direction of the Court, there is compliance or not. In the instant case, we find nothing on the record whether as per the direction 1/2 of the amount was deposited or not. There is nothing to indicate whether any note is placed on record by the learned advocate that the remaining amount shall be paid within 10 days. Registry to explain.

Sd/-
(B.C.PATEL, J)

Sd/-
(SHARAD D DAVE, J)"

Thereupon, the Office has submitted a note dated September 20, 2001, which reads as under:

" S.C.A.No.1882/82
Mr.H.L.PATEL-Advocate for
Petitioners.
V/s
Mr.S.N.Shelat-Advocate
for Respondent No.1
Respondent No.2 Served

SUBMITTED TO HONOURABLE MESSRS JUSTICES B.C.PATEL AND SHARAD D. DAVE :-

The following order dated 12/09/2001 passed by Your Lordships may kindly be seen.

Where the Court has made an order that notice will be issued only on compliance of certain directions, it is the duty of the Registrar to make a note on the docket that as per the direction of the Court, there is compliance or not. In the instant case, we find nothing on the record whether as per the direction 1/2 of the amount was deposited or not. There is nothing to

indicate whether any note is placed on record by the learned advocate that the remaining amount shall be paid within 10 days. Registry to explain.

Accordingly, registry is directed to explain about the compliance of order dtd. 06.05.1982 as well as the note to be placed on the docket as per the direction of Honourable Court.

In view of the above, on verification of Office record, it is respectfully submitted that as the Honourable Court's Order dtd. 06.05.1982 was conditional, before issuing the notice, in the first instance on 7.5.1982 Rs.30,550/- and on 11.5.1982, Rs.3,500/- were deposited (Flag-A) by Petitioners 1 to 9 and 11 only whereas amount was not deposited for Petitioner 10. The advocate has also not filed a note within ten days as per court's order dated 6-5-1982 that he will deposit remaining amount but, on 18.6.1982 Rs.26,844/- (Flage-B) were deposited by Petitioners 1 to 7 and 9 only and not deposited by Petitioner 8, 10 and 11 eventhough the notice was issued which should not have been issued.

It is further submitted that the submission regarding amount deposited in High Court were already tagged in Farad. But, through oversight, it was forgotten to make a note regarding amount deposited in the Court on the Farad or docket sheet.

Under the circumstances, Your Lordships are kindly requested to take into consideration the above explanation.

Inconvenience caused to the Honourable Court is sincerely regretted.

Sd/-
DATE:-20.9.2001 Dy. Section Officer
Spl. C.A. Branch.

Sd/-
Section Officer,
Spl. C.A. Branch.

Respectfully Resubmitted.

Sd/- 20/9/2001

Assistant Registrar,
Spl. C.A. Branch.

THROUGH THE JOINT REGISTRAR.

4. Submission made by the Office makes it evident that conditional order dated May 6, 1982 was not complied with. Under the circumstances, this Bench is of the view that the Court need not exercise discretion in favour petitioners under Article 226 of the Constitution, and the petition is liable to be dismissed.

5. For the foregoing reasons, the petition fails, and is dismissed. Rule is discharged. Interim relief, if any operative, is hereby vacated. There shall be no order as to costs.

(J.M. Panchal, J.)

(A.M. Kapadia, J.)

Rajendra